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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

RAYMOND C. et al., Petitioners, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; JOHN C. et al., Real Party in Interest.	G053036 (Super. Ct. No. A182822) O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Jamoa A. Moberly, Judge. Motions for judicial notice granted. Writ petition dismissed as moot.

Locke Lord, Jon L. Rewinski and Matthew B. Nazareth for Petitioners.

No appearance for Respondent.

Sharon Petrosino, Public Defender, and Christopher D. McGibbons, Deputy Public Defender, for Real Party in Interest John C.

Enright & Ocheltree, Julie A. Ocheltree and Noelle V. Bensussen for Real Party in Interest Harbor Developmental Disabilities Foundation, doing business as Harbor Regional Center.

* * *

John C.[1] is a 60-year-old, developmentally disabled person who has resided at Fairview Developmental Center (Fairview) for 50 years based on a series of placements under the Lanterman Developmental Disabilities Services Act (Lanterman Act; Welf. & Inst. Code, § 4500 et seq.).[2] Petitioners Raymond C., Carol. C., and Andrea C. (collectively, Petitioners) are John's family members and coconservators. Real Party in Interest Harbor Developmental Disabilities Foundation, doing business as Harbor Regional Center (Harbor Regional Center), is a nonprofit corporation that contracts with the state to determine a person's eligibility to receive services under the Lanterman Act and to coordinate and deliver those services. The Lanterman Act requires the Harbor Regional Center to work with Petitioners to identify and place John in the least restrictive facility that meets his needs.

This original proceeding is the third time we have been asked to determine the appropriate procedures for deciding whether Fairview remains the least restrictive placement capable of meeting John's needs. In each of the first two opinions, we explained John's Fairview placement required both an initial and periodic judicial review to protect John's constitutional rights because a state developmental center placement

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[1] For privacy reasons, we abbreviate the last name of John and his family members, and will use only their first names. (See Welf. & Inst. Code, § 4502, subd. (b); *Conservatorship of Susan T.* (1994) 8 Cal.4th 1005, 1008, fn. 1.)

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

constitutes a significant restraint on his fundamental right to personal liberty and all other statutory schemes that authorize similar types of protective custody require judicial reviews. As we explained, the purpose of these independent reviews is limited to determining whether John's disabilities continue to warrant his placement in a state developmental center, the most restrictive environment available under the Lanterman Act. Both opinions, however, emphasized the Lanterman Act's administrative fair hearing process is the exclusive forum for resolving disputes over a regional center's decision to change a developmentally disabled person's placement or services, and the courts lack jurisdiction to resolve these disagreements until the parties exhaust their administrative remedies.

Here, the Orange County Public Defender (Public Defender) filed an ex parte application on John's behalf seeking an order compelling Petitioners and the Harbor Regional Center to move John to a less restrictive, community-based placement the Harbor Regional Center identified as capable of meeting John's needs. The Public Defender noted the facility had reserved a spot for John, but would give that spot to another developmentally disabled person if John did not fill the spot immediately. Petitioners opposed the application, arguing the facility did not meet John's needs. The Harbor Regional Center supported the application, arguing the facility met John's needs but Petitioners had prevented the move by refusing to grant their consent and refusing to participate in the fair hearing process. The trial court granted the application and ordered John moved to the new facility. Petitioners timely filed a petition in this court seeking a writ of mandate or prohibition to compel the trial court to vacate its order and enter a new order denying the Public Defender's application because the court exceeded its jurisdiction.

We dismiss the petition as moot. The facility has given the spot it reserved for John to another developmentally disabled person, and therefore John no longer can be moved to the facility as the trial court ordered. We nonetheless exercise our discretion to

decide whether the court's order exceeded its jurisdiction and to provide the parties further guidance in resolving this longstanding dispute.

We conclude the trial court exceeded its jurisdiction because the parties failed to use the Lanterman Act's fair hearing process to resolve their dispute. We reject the Public Defender's and the Harbor Regional Center's contention they could not use the administrative fair hearing process because Petitioners would neither consent to John's transfer to the new facility nor participate in the fair hearing process to resolve their objections concerning that facility. As explained below, the Harbor Regional Center did not provide Petitioners proper notice of its proposed action, and therefore Petitioners were not required to use the fair hearing process. Once the Harbor Regional Center identifies another less restrictive facility capable of meeting John's needs and provides Petitioners with proper notice of its proposed action to move John to that facility, Petitioners must participate in the fair hearing process or risk waiving their objections to that facility.[3]

I

LEGAL BACKGROUND

A. *The Lanterman Act and State Developmental Center Placements*

The Lanterman Act "'grants persons with developmental disabilities the right to receive treatment and services to meet their needs, regardless of age or degree of handicap, at each stage of life.'" (*In re Michael K.* (2010) 185 Cal.App.4th 1112, 1117 (*Michael K.*).) "The Legislature enacted the Lanterman Act to 'establish certain rights of

[3] The parties request that we judicially notice the records in the previous appeal and writ proceeding regarding John's Fairview placement—*In re John C.* (April 28, 2016, G051189 [nonpub. opn.] and *Raymond C.* (November 12, 2013, G046839) [nonpub. opn.]—and also the administrative fair hearing process the Harbor Regional Center initiated regarding John's proposed move to the new facility. We grant the requests.

the so-called developmentally disabled persons, primarily their entitlement to the maximum degree of personal liberty and autonomy consonant with their handicap.'" (*Ibid*.) "These [rights] include the 'right to treatment and habilitation services and supports in the least restrictive environment' and the 'right to dignity, privacy, and humane care,' with treatment, services and supports provided in natural community settings to the maximum extent possible." (*Capitol People First v. State Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 682.)

The Department of Developmental Services "is the state agency that has jurisdiction over the laws relating to the care, custody, and treatment of developmentally disabled persons. (§ 4416.)" (*Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 306 (*Harbor Regional*).) Under the Lanterman Act, the department "contracts with private nonprofit corporations to establish and operate a network of 21 regional centers [including the Harbor Regional Center] that are responsible for determining eligibility, assessing needs, and coordinating and delivering direct services to developmentally disabled persons and their families. [Citation.] The regional centers' purpose is to 'assist persons with developmental disabilities and their families in securing those services and supports which maximize opportunities and choices for living, working, learning, and recreating in the community.' [Citation.] The state 'allocates funds to the centers for operations and the purchasing of services, including funding to purchase community-based services and supports.'" (*Michelle K. v. Superior Court* (2013) 221 Cal.App.4th 409, 422 (*Michelle K.*); *Harbor Regional*, at pp. 306-307.)

"Once a regional center determines that a person is eligible for services, an individual program plan must be developed to determine what services and supports are required, taking into account the needs and preferences of the individual and the family, and promoting independent, productive, and normal lives. The services provided must be effective in meeting the plan's goals, and must also reflect the preferences and choices of

the consumer, as well as the cost-effective use of public resources. (§ 4646, subd. (a).)" (*Harbor Regional*, *supra*, 210 Cal.App.4th at p. 307; see *Michelle K.*, *supra*, 221 Cal.App.4th at p. 422.)

"Individual plans are formulated as part of a collaborative process of individual needs determination by the disabled person and, if appropriate, her parents or guardians. (§ 4646, subd. (b).) The plan must be prepared jointly by the planning team, and decisions concerning the goals, objectives, and services provided shall be made by agreement between the regional center and the disabled person. (§ 4646, subd. (d).)" (*Harbor Regional*, *supra*, 210 Cal.App.4th at p. 307; see *Michelle K.*, *supra*, 221 Cal.App.4th at p. 422.) The developmentally disabled person and his or her conservator or representative are statutorily guaranteed "the opportunity to actively participate in the development of the plan." (§ 4646, subd. (b).)

A state development center is the most restrictive placement under the Lanterman Act. (*Michelle K.*, *supra*, 221 Cal.App.4th at pp. 441-442.) "Before July 1, 2012, a nondangerous, developmentally disabled person could be admitted to a state developmental center in two ways. First, the person could submit a written admission application if he or she 'is in such condition of mind as to render him competent to make [the application].' (§ 6000, subd. (a)(1).) Second, section 4825 authorized admission 'upon the application of the person's parent or conservator in accordance with the provisions of Sections 4653 and 4803.' (See § 6000.5.) Section 4653 states 'no developmentally disabled person shall be admitted to a state hospital except upon the referral of a regional center.' Section 4803 provides that a regional center may not recommend admission of a developmentally disabled person to a community care or health facility unless the regional center certifies the person to be admitted or the person's parent or conservator does not object. Section 4825 does not limit the length of a developmentally disabled person's commitment, nor does it require judicial review of the placement." (*Michelle K.*, at pp. 422-423.)

"Effective July 1, 2012, the Legislature amended the Welfare and Institutions Code to prohibit nondangerous, developmentally disabled persons from being admitted to state developmental centers. (§§ 4507, 7505.) Section 7505 now provides that a person shall *not* be admitted to a state developmental center unless the person is developmentally disabled *and* the person is (1) committed by a court to Fairview Developmental Center because the person is a danger to self or others under section 6500 and is suffering an acute crisis as defined in section 4418.7; (2) committed by a court to the Porterville Developmental Center's secure treatment program through the criminal justice system or juvenile court system; or (3) a prior resident of a developmental center who was provisionally released no more than 12 months earlier." (*Michelle K.*, *supra*, 221 Cal.App.4th at p. 423.)

"These recent Welfare and Institutions Code amendments do not require moving nondangerous, developmentally disabled persons living in a state developmental center on July 1, 2012, to a different facility. Instead, the amendments require the regional center responsible for the committee to conduct a comprehensive assessment and 'identify the types of community-based services and supports available to the [person].' (§ 4418.25, subd. (c)(2)(A) & (B).) The regional center must then provide the assessment to the individual program planning team to assist it in determining the least restrictive environment for the committee. (§ 4418.25, subd. (c)(2)(D).)" (*Michelle K.*, *supra*, 221 Cal.App.4th at p. 423.) The Legislature required the regional center to complete this assessment by December 31, 2015 (§ 4418.25, subd. (c)(2)(C)), and the assessment must be "updated annually as part of the individual program planning process for as long as the [developmentally disabled person] resides in the developmental center" (§ 4418.25, subd. (c)(2)(E)). When a community-based placement is identified and selected, all necessary services and supports must be in place before transferring a nondangerous, developmentally disabled person from a developmental center to the community-based living arrangement. (§ 4418.3, subd. (a).)

In re Hop (1981) 29 Cal.3d 82 (*Hop*) examined the constitutionality of section 4825, which previously authorized indefinite confinement of a developmentally disabled person in a state developmental center based solely on a request by the person's parent or conservator, a recommendation by a regional center, and the lack of any objection from the person or the person's representative. (*Hop*, at pp. 87-88; *Michelle K.*, *supra*, 221 Cal.App.4th at pp. 426-427.) The Supreme Court explained confinement in a state development center constituted a significant restraint on a disabled person's fundamental right to personal liberty, and therefore required application of criminal due process standards to test its validity, including a preconfinement judicial hearing to determine whether the person's disabilities warranted the confinement. (*Hop*, at pp. 89, 92; *Michelle K.*, at p. 427.) *Hop* also concluded a disabled person's equal protection rights required a preconfinement judicial review because no other similarly situated adult in need of protective custody lawfully could be placed in a developmental center without a judicial determination the placement was appropriate. (*Hop*, at pp. 92-94; *Michelle K.*, at p. 428.) Without a preconfinement judicial review, the Supreme Court explained placement under section 4825 would be unconstitutional. (*Michelle K.*, at p. 428.)

In *Michelle K.*, we concluded the same considerations required periodic judicial review to ensure the person's disabilities continued to warrant an ongoing section 4825 developmental center placement. We emphasized periodic *Hop* reviews are limited to determining whether the developmentally disabled person's disabilities continue to justify the restraints on the person's fundamental liberty interests that are inherent in a state developmental center placement. (*Michelle K.*, *supra*, 221 Cal.App.4th at p. 443.) The jurisdiction to conduct these reviews, however, "does not confer or create jurisdiction to monitor the ongoing placement or make decisions regarding the details of the services the developmentally disabled person receives." (*Id*. at p. 441.)

B. *The Lanterman Act's Administrative Fair Hearing Process*

"Regional centers like [the] Harbor [Regional Center] are required to 'have an agency fair hearing procedure for resolving conflicts between' themselves and those applying for or receiving services under the [Lanterman] Act. (§ 4705, subd. (a).) Except for certain Medicaid-related services, 'all issues concerning the rights of persons with developmental disabilities to receive services under [the Lanterman Act] shall be decided under this chapter. . . .' (§ 4706, subd. (a).) 'Any applicant for or recipient of services [(or their authorized representative)] who is dissatisfied with any decision or action of the [regional center] which he or she believes to be illegal, discriminatory, or not in the recipient's or applicant's best interests, shall, upon filing a request . . . , be afforded an opportunity for a fair hearing.' (§ 4710.5, subd. (a).)" (*Harbor Regional, supra*, 210 Cal.App.4th at p. 308; see *Conservatorship of Whitley* (2007) 155 Cal.App.4th 1447, 1459-1460 (*Whitley*).) Moreover, section 4803 provides that all objections to a proposed placement of a developmentally disabled person in a community care facility "shall be resolved by a fair hearing procedure pursuant to Section 4700." (§ 4803.)

"The recipient of services or his or her representative must make the request for a fair hearing in writing on a form provided by the service agency and direct the request to the director of the service agency within 30 days after notification of the disputed decision or action. [Fn. omitted.] (§ 4710.5, subds. (a), (b), (d).) Upon receipt of a hearing request, the service agency director shall immediately provide notice of the claimant's rights in connection with the fair hearing. (§§ 4710.6, subd. (a), 4711.) An administrative fair hearing must be held within 50 days of receipt of the request for a fair hearing. (§ 4712, subd. (a).) If a good cause continuance is granted, for any of the five reasons enumerated in the statute, the granting of the continuance cannot extend the time

period for rendering a final administrative decision beyond a 90-day period. (§ 4712, subd. (a).)"[4] (*Whitley*, *supra*, 155 Cal.App.4th at p. 1460.)

"The [Department of Developmental Services] is required to 'contract for the provision of independent hearing officers' to conduct the hearing. (§ 4712, subd. (b).) The hearing officer is required to have special training in the law applicable to the developmentally disabled and the services available to them and the law of administrative hearings. (§§ 4710.5, subd. (a), 4712, subd. (b).) The agency awarding the contract for independent hearing officers 'shall biennially conduct, or cause to be conducted, an evaluation of the hearing officers who conduct' administrative fair hearings. (§ 4712, subd. (n).)" (*Whitley*, *supra*, 155 Cal.App.4th at p. 1460.) The Office of Administrative Hearings is the Department of Developmental Service's designee for conducting these hearings. (*Harbor Regional Center*, *supra*, 210 Cal.App.4th at p. 308.)

"At least five calendar days prior to the hearing, the claimant and the service agency shall exchange a list of potential witnesses, the subject matter of their testimony, and copies of documentary evidence. (§ 4712, subd. (d).) At the fair hearing, which 'need not be conducted according to the technical rules of evidence,' a claimant has '[t]he opportunity to be present in all proceedings and to present written and oral evidence'; '[t]he opportunity to confront and cross-examine witnesses'; '[t]he right to appear in person with counsel or other representatives of his or her own choosing'; '[t]he right to an interpreter'; and '[t]he right to access to records.' (§§ 4712, subd. (i), 4701, subd. (f).) Absent good cause, the service agency presents its witnesses and all other evidence first and then the claimant presents his or her case. (§ 4712, subd. (j).) A

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[4] "The statute also provides detailed provisions for claimants who wish to attempt to resolve the issue through a voluntary informal meeting or through voluntary mediation before proceeding to an administrative fair hearing. (§§ 4710.5, subd. (a), 4710.6, subds. (a), (b), 4710.7, 4710.8, 4710.9, 4711.5.)" (*Whitley*, *supra*, 155 Cal.App.4th at pp. 1459-1460.)

recording shall be made of the proceedings at public expense. (§ 4712, subd. (k).)" (*Whitley*, *supra*, 155 Cal.App.4th at p. 1460.)

"Within 10 working days of the fair hearing, the hearing officer must 'render a written decision' containing 'a summary of the facts, a statement of the evidence from the proceedings that was relied upon, a decision on each of the issues presented, and an identification of the statutes, regulations, and policies supporting the decision.' (§ 4712.5, subds. (a), (b).) The hearing officer must 'transmit the decision to each party and to the director of the responsible state agency' and notify them 'this is the final administrative decision, that each party shall be bound thereby, and that either party may appeal the decision to a court of competent jurisdiction within 90 days of . . . receiving notice of the final decision.' (§ 4712.5, subd. (a).)" (*Whitley*, *supra*, 155 Cal.App.4th at pp. 1460-1461.) The parties may seek judicial review by filing a writ of administrative mandamus. (*Michelle K.*, *supra*, 221 Cal.App.4th at p. 424.) Judicial review "'shall not operate as a stay of enforcement of the final administrative decision, provided that either party may seek a stay of enforcement from any court of competent jurisdiction.' (§ 4715, subd. (c).)" (*Whitley*, 155 Cal.App.4th at p. 1461.)

II

FACTS AND PROCEDURAL HISTORY

John is a 60-year-old, developmentally disabled adult with an estimated IQ of 14. He suffers a wide variety of medical conditions that require around-the-clock care, including generalized nonintractable epilepsy, lipoma, osteopenia, hypothyroidism, hypertension, and coronary arteriosclerosis. John cannot communicate verbally, nor can he tell others when he is experiencing pain or needs medical attention. He is fully ambulatory, but he cannot self-administer the many daily medications he requires, nor can he provide for his basic personal needs such as food, shelter, and clothing. For his

own safety, John requires close supervision because he cannot appreciate basic safety hazards.

Based on John's developmental disabilities, his parents, Raymond and Carol, admitted him to Fairview at the age of 10. In 1996, the trial court appointed Raymond, Carol, and John's sister, Andrea, as John's limited coconservators under the Probate Code. The court granted Petitioners the power "[t]o fix the residence or specific dwelling of [John] to include *request* for placement at a State Developmental Center" (italics added), give or withhold medical consent, and contract on John's behalf. The court has investigated and reviewed this limited conservatorship every two years, but has not modified or terminated it.

Beginning in 1993, the trial court annually reviewed the suitability of John's Fairview placement under *Hop* and section 4825. The Harbor Regional Center initiated each of these annual "*Hop* reviews" by requesting court approval for John to remain at Fairview. Each time, the court appointed the Public Defender to serve as John's attorney and ultimately approved John's continued placement at Fairview subject to "further judicial review within one (1) year."

The Harbor Regional Center filed its most recent "*Hop* petition" in September 2010, explaining "there is no known suitable, legally available placement [for John] that is less restrictive than the proposed state developmental center placement." In December 2011, while that petition remained pending, the Public Defender filed a habeas corpus petition on John's behalf, alleging John's ongoing Fairview placement unlawfully restrained his personal liberty because it was not the least restrictive placement capable of meeting his needs.

In response, Petitioners filed their first petition for writ of mandate or prohibition to prevent the trial court from deciding the habeas corpus petition. Petitioners urged us to dismiss the habeas corpus petition because the Public Defender lacked authority to file it on John's behalf. Petitioners also argued the trial court lacked

jurisdiction under *Hop* to review John's ongoing Fairview placement because the appropriate placement should be determined through the Lanterman Act's administrative fair hearing process. Petitioners, however, did not seek any relief regarding the pending *Hop* petition. In November 2013, we granted Petitioners' writ petition and "direct[ed] the trial court to (1) enter an order dismissing the habeas corpus petition, and (2) conduct a hearing on the *Hop* petition."

On remand, the trial court dismissed the Public Defender's habeas corpus petition and scheduled the Harbor Regional Center's *Hop* petition for trial. The Harbor Regional Center, however, moved to withdraw its *Hop* petition and vacate the trial date because it concluded Fairview no longer provided the least restrictive placement that met John's needs. The Harbor Regional Center, however, did not state whether it planned to transfer John to a specific facility and did not seek an order changing John's placement.

Petitioners opposed the motion, arguing the trial court had jurisdiction to review John's ongoing Fairview placement despite the Harbor Regional Center's motion to withdraw its *Hop* petition because Petitioners, as John's coconservators with the authority to fix his residence, believed Fairview was the least restrictive placement that met John's needs. The trial court disagreed. It granted the Harbor Regional Center's motion and dismissed the *Hop* petition without reviewing John's Fairview placement. In December 2014, Petitioners appealed the trial court's order.

The next month, the Harbor Regional Center began a comprehensive review of John and his needs, and potential community-based facilities capable of providing the necessary services and supports for John. This review concluded with the Harbor Regional Center identifying a facility located on Pepperwood Avenue in Long Beach, California (Pepperwood Facility) as a less restrictive, community-based facility that met John's needs. The Harbor Regional Center invited Petitioners to visit the Pepperwood Facility, and in June 2015, began cross-training the facility's personnel on John's unique needs.

On August 4, 2015, Petitioners' counsel objected to the Harbor Regional Center's efforts to move John to the Pepperwood Facility. Petitioners argued the Pepperwood Facility did not meet John's needs, and he could not be moved from Fairview without their consent because they were John's coconservators with the power to fix his residence. Petitioners therefore instructed Harbor Regional Center to cease its efforts to move John.

The Harbor Regional Center treated this letter as a fair hearing request under the Lanterman Act and forwarded it to the Office of Administrative Hearings, which set a hearing for October 2015, and served notice on all parties. On August 26, 2015, the Harbor Regional Center wrote Petitioners, explaining it treated their letter as a fair hearing request because the letter stated Petitioners opposed the Harbor Regional Center's efforts to transition John to the Pepperwood Facility. Although it acknowledged a notice of proposed action typically preceded a hearing request under the administrative fair hearing process, the Harbor Regional Center explained its letter served as a notice of proposed action because the letter provided the factual and legal basis for transitioning John to the Pepperwood Facility and advised Petitioners of their fair hearing rights. Finally, the letter assured Petitioners the Harbor Regional Center "will not be moving John without [Petitioners'] written consent or some order that permits John to be moved."

Petitioners responded by sending the Office of Administrative Hearings a letter requesting that it withdraw its hearing notice because they had not requested a hearing, and the suitability of John's Fairview placement was pending before this court on Petitioners' appeal from the trial court's order dismissing the *Hop* petition. The Office of Administrative Hearings treated this letter as a motion to dismiss, continued the fair hearing, and asked the parties to submit briefs addressing the Harbor Regional Center's authority to request a fair hearing when neither the claimant nor his legal representatives sought one. In December 2015, the Office of Administrative Hearings heard the motion and dismissed the administrative proceedings without prejudice,

explaining the Harbor Regional Center lacked authority to request an administrative fair hearing on Petitioners' behalf, and Petitioners were not seeking a hearing because they were challenging the Harbor Regional Center's actions in court.[5]

In January 2016, the Public Defender filed an ex parte application on John's behalf seeking an order compelling Petitioners and the Harbor Regional Center to relocate John from Fairview to the Pepperwood Facility. The application explained the Harbor Regional Center had determined the Pepperwood Facility was a less restrictive placement that met John's needs, and the Pepperwood Facility was holding a space for John, but would make the space available to another developmentally disabled person if John was not relocated immediately. The Public Defender failed to serve the ex parte application on either Petitioners or the Harbor Regional Center before the hearing, but both responded to the application without seeing it. Petitioners opposed the application, arguing the trial court lacked jurisdiction to make any order regarding John's placement while their appeal from the court's order dismissing the *Hop* petition remained pending. The Harbor Regional Center responded to the application, explaining Petitioners were preventing it from relocating John.

The trial court granted the Public Defender's application and ordered Petitioners and the Harbor Regional Center "to take all steps to move [John] out of Fairview Developmental Center as soon as possible, to [the] Pepperwood [Facility]." The court, however, stayed its order for one week to allow Petitioners to seek relief in this court. Petitioners timely filed the current petition seeking a writ of mandate or prohibition to compel the trial court to vacate its order and enter a new order denying the Public Defender's ex parte application. We stayed the trial court's order and invited informal responses from the Public Defender and the Harbor Regional Center.

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[5] In March 2016, the Office of Administrative Hearings issued a written order dismissing the administrative proceedings.

After receiving those responses, we issued an order inviting supplemental briefing from the parties addressing (1) whether the trial court had jurisdiction to order a change in John's placement outside the Lanterman Act's fair hearing process; (2) whether the Harbor Regional Center's August 2015 letter started the 30-day period in which Petitioners must request a hearing under the fair hearing process; (3) whether Petitioners waived their right to a fair hearing by failing to request one within that 30-day period; and (4) whether the Public Defender had standing to file the ex parte application on John's behalf. The parties submitted these briefs in March 2016, and informed us the Pepperwood Facility gave the space it had reserved for John to another developmentally disabled person.

In April 2016, we issued our unpublished opinion on Petitioners' appeal from the trial court's order dismissing the *Hop* petition. We affirmed the trial court order, explaining judicial review of John's ongoing Fairview placement under the *Hop* petition was limited to determining whether John's disabilities continued to justify the restraint on his personal liberty inherent in that placement, but the review no longer was necessary after the Harbor Regional Center withdrew its support for John's Fairview placement because the Lanterman Act does not permit John to remain at Fairview without the Harbor Regional Center's approval. We further explained the Harbor Regional Center's decision to withdraw its *Hop* petition transformed the matter from an independent review of the ongoing placement's constitutionality into a dispute between Petitioners and the Harbor Regional Center over the least restrictive placement capable of meeting John's needs, and the Lanterman Act's administrative fair hearing process provided the exclusive forum for resolving that dispute.

Finally, in May 2016, we ordered the Public Defender and the Harbor Regional Center to show cause why we should not issue a writ of mandate. Based on the supplemental briefs, we gave the parties the option not to file an answer or reply. Both elected not to file any further pleadings or briefs, but they requested oral argument.

III

DISCUSSION

A. *Although the Petition is Moot, We Address the Issue Presented Because It is Likely to Recur*

All parties acknowledge Petitioners' writ petition is now moot because the Pepperwood Facility has given the space it reserved for John to another developmentally disabled person, and therefore John no longer can be moved to the Pepperwood Facility as the trial court ordered. None of the parties, however, have requested that we dismiss the petition, and instead they continue to dispute the trial court's authority to order John's transfer from Fairview when the fair hearing process has not been completed.

"As a general rule, it is a court's duty to decide '"'actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'"' [Citation.] An appellate court will dismiss an appeal when an event occurs that renders it impossible for the court to grant effective relief." (*In re N.S.* (2016) 245 Cal.App.4th 53, 58-59.)

"'However, a reviewing court may exercise its inherent discretion to resolve an issue rendered moot by subsequent events if the question to be decided is of continuing public importance and is a question capable of repetition, yet evading review. [Citations.] We decide on a case-by-case basis whether subsequent events . . . make a case moot and whether our decision would affect the outcome in a subsequent proceeding.'" (*In re Anna S.* (2010) 180 Cal.App.4th 1489, 1498.) We also have "inherent discretion to resolve an issue [that has become moot] . . . where 'there is a likelihood of recurrence of the controversy between the same parties or others.'" (*In re N.S.*, *supra*, 245 Cal.App.4th at p. 59; see *Grier v. Alameda-Contra Costa Transit Dist.* (1976) 55 Cal.App.3d 325, 330.)

As the foregoing procedural history reveals, this is the third time the parties have asked us to review their disagreement over the least restrictive placement that meets John's needs. Each time, we have endeavored to explain the appropriate procedures only to have one side or the other attempt either to shortcut the procedures or block them altogether. We therefore exercise our discretion to decide this matter and once again spell out the appropriate procedures for resolving their dispute. (See *Bracher v. Superior Court* (2012) 205 Cal.App.4th 1445, 1454-1455; *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2005) 126 Cal.App.4th 144, 150.)

B. *The Trial Court Lacked Jurisdiction to Make Any Order About John's Placement Until the Parties Completed the Administrative Fair Hearing Process*

Based on our request, the parties briefed whether the trial court had jurisdiction to issue its ex parte order changing John's placement without first requiring the parties to pursue the available remedies under the Lanterman Act's administrative fair hearing process. Petitioners contend that process provides the exclusive means for resolving disputes about John's placement, and the court therefore lacked jurisdiction to make any order until the parties properly invoked and completed that process. In contrast, both the Harbor Regional Center and the Public Defender contend the court's continuing jurisdiction to review John's limited conservatorship allowed the court to issue its order because Petitioners thwarted the process by preventing his transfer. We agree with Petitioners and conclude the trial court exceeded its jurisdiction.

It is well established the Lanterman Act's administrative fair hearing process "provide[s] the exclusive remedy for a developmentally disabled person's legal representative to object to a community placement decision." (*Michelle K.*, *supra*, 221 Cal.App.4th at p. 442; see *Harbor Regional*, *supra*, 210 Cal.App.4th at p. 312 ["the [Lanterman] Act's fair hearing procedures are a claimant's exclusive remedy 'for issues relating to the provision of services,' which must first be exhausted before seeking

judicial relief in the superior court"]; *Michael K.*, *supra*, 185 Cal.App.4th at pp. 1125-1126; *Whitley*, *supra*, 155 Cal.App.4th at pp. 1462-1464.)

For example, in *Michael K.* and *Whitley*, the Courts of Appeal held a dispute over whether a developmentally disabled person should remain in a state developmental center or be transferred to a community-based placement must be resolved through the Lanterman Act's fair hearing process, and judicial review may be sought only after exhausting that exclusive administrative remedy. (*Michael K.*, *supra*, 185 Cal.App.4th at pp. 1116-1117, 1125-1126; *Whitley*, 155 Cal.App.4th at pp. 1455-1457, 1462-1464.) The *Whitley* court based its conclusion on the comprehensive nature of the administrative procedures established by the Lanterman Act which "expressly" made the fair hearing process "the exclusive remedy for issues relating to the provision of services" and the common law exhaustion of administrative remedies doctrine. (*Whitley*, at p. 1463.)

The parties' obligation to exhaust administrative remedies before resorting to the courts "is not a matter of judicial discretion, it is a matter of jurisdiction. '"The administrative tribunal is created by law to adjudicate the issue sought to be presented to the court. The claim or 'cause of action' is within the special jurisdiction of the administrative tribunal, and the courts may act only to *review* the final administrative determination. If a court allowed a suit to be maintained prior to such final determination, it would be interfering with the subject matter jurisdiction of another tribunal. Accordingly, the exhaustion of an administrative remedy has been held *jurisdictional* in California."'" (*Whitley*, *supra*, 155 Cal.App.4th at p. 1464.)

"The exhaustion doctrine serves several well-established functions. First, the administrative remedy provides an opportunity to redress the alleged wrong without resorting to costly litigation. [Citation.] Second, even where complete relief is not obtained, it can serve to reduce the scope of the litigation or possibly avoid litigation. [Citations.] Third, an administrative remedy ordinarily provides a more economical and

less formal forum to resolve disputes. [Citations.] Finally, the exhaustion requirement promotes the development of a more complete factual record, allowing the administrative decision maker an opportunity to apply his or her expertise, both of which assist later judicial review if necessary." (*Whitley*, *supra*, 155 Cal.App.4th at pp. 1463-1464.)

Neither the Harbor Regional Center nor the Public Defender dispute that Petitioners' objections to John's proposed transfer are subject to the administrative fair hearing process. (See § 4803; see also §§ 4706, subd. (a), 4710.5, subd. (a); *Harbor Regional*, *supra*, 210 Cal.App.4th at p. 308.) Instead, they contend the trial court had jurisdiction to issue its order because the process failed when Petitioners' refused to participate in the fair hearing process. According to the Harbor Regional Center and the Public Defender, they had no choice other than to seek judicial intervention because they could not transfer John to the Pepperwood Facility without Petitioners' consent or an order directing the transfer, and Petitioners refused to consent to the transfer and refused to participate in the fair hearing process that was a prerequisite to obtaining the necessary order. This argument misconstrues Petitioners' authority and the fair hearing process.

Petitioners cannot prevent John's transfer by simply withholding their consent and refusing to participate in the fair hearing process. Although section 4803 prohibits a regional center from admitting a developmentally disabled person to a community care facility if the disabled person or his or her legal representative objects, section 4803 also requires any objection to be resolved through the fair hearing process. (§ 4803.) Thus, once the Harbor Regional Center decided to transfer John to the Pepperwood Facility and gave Petitioners proper notice of that proposed action, Petitioners had two options. They could either agree to the proposed transfer or invoke the fair hearing process to resolve their objections to the transfer. Petitioners' failure to invoke the fair hearing process within the time allotted waives their objections, and the Harbor Regional Center then could proceed with John's transfer.

To trigger Petitioners' obligation to invoke the fair hearing process or risk waiving their objections, the Harbor Regional Center must serve Petitioners with a notice of proposed action. Specifically, the fair hearing process required the Harbor Regional Center to give Petitioners written notice of its proposed action at least 30 days before it made the decision to change John's Lanterman Act services by transferring him to the Pepperwood Facility. (§ 4710, subd. (a).) That notice must be served by certified mail and inform Petitioners of the proposed action, the reasons for the action, the effective date of the action, the specific law, regulation, or policy supporting the action, "[t]he responsible state agency with whom a state appeal may be filed, including the address of the state agency director," and their right to a fair hearing, including a description of the fair hearing procedures and deadlines. (§ 4701, subd. (e), 4710.) Once the Harbor Regional Center serves that notice, Petitioners would have 30 days to invoke the fair hearing process by submitting a mandatory hearing request form provided by the Harbor Regional Center. (§ 4710.5, subds. (a) & (b).) If Petitioners made a hearing request without using the mandatory form, the Harbor Regional Center was required to provide the form and help Petitioners complete it. (§ 4710.5, subd. (c).)

The Harbor Regional Center, however, failed to give Petitioners notice of its proposed action. In January 2015, the Harbor Regional Center conducted a comprehensive assessment of John and his needs, and thereafter identified the Pepperwood Facility as a less restrictive placement that met his needs. The Harbor Regional Center then invited Petitioners to visit the Pepperwood Facility, but it failed to give them notice of any specific plan to transfer John to the facility. In June and July 2015, the Harbor Regional Center conducted several cross-training sessions with the Pepperwood Facility's personnel to educate them on John's specific needs. The Harbor Regional Center also scheduled additional sessions for August and September 2015, and began planning for John to make overnight visits as part of his transition to the facility, but again the Harbor Regional Center did not give Petitioners notice of these actions.

In August 2015, Petitioners learned of these activities and wrote the Harbor Regional Center to object. Petitioners explained they did not believe the Pepperwood Facility met John's needs and they instructed the Harbor Regional Center not to transition him to the facility. The Harbor Regional Center treated this letter as a fair hearing request and forwarded it to the Office of Administrative Hearings without notifying Petitioners or providing the mandatory hearing request form. After the Office of Administrative Hearings set a hearing date and served notice on Petitioners, the Harbor Regional Center sent the letter it identifies as its notice of proposed action. That letter, however, was sent by e-mail and regular U.S. mail, not certified mail, and it failed to provide a specific proposal for transitioning John to the Pepperwood Facility or an effective date for the proposed action. Rather, it spoke only in general terms about transferring John to the Pepperwood Facility and assured Petitioners the Harbor Regional Center would not move John "without [Petitioners'] written consent or some order that permits John to be moved." Petitioners asked the Office of Administrative Hearings to withdraw its notice of hearing because they did not request a hearing and they were litigating their dispute with the Harbor Regional Center in court. The Office of Administrative Hearings granted the request and dismissed the administrative proceedings without prejudice because the Harbor Regional Center lacked the authority to initiate the fair hearing process without Petitioners' consent.

These facts show the administrative fair hearing process "failed" in this case because the Harbor Regional Center did not give proper notice of its proposed action. Consequently, Petitioners had no obligation to invoke the fair hearing process or risk waiving their objections to John's transfer. Instead, the Harbor Regional Center began implementing its decision to transfer John without giving the mandatory advance notice, and when Petitioners objected, the Harbor Regional Center improperly served a belated notice of proposed action that failed to describe a specific proposed action to which Petitioners could object or provide an effective date for the proposed action. As

Petitioners explain, they had no objection to the Harbor Regional Center agreeing not to transfer John without their approval or an appropriate order. The administrative fair hearing process therefore was neither exhausted nor excused, and the trial court lacked jurisdiction to order John's transfer to the Pepperwood Facility.[6]

Independent of the Lanterman Act and its fair hearing process, the Harbor Regional Center and the Public Defender argue the trial court had continuing jurisdiction to review Petitioners' performance as John's coconservators. In support, they point to various Probate Code sections that authorize the trial court to review a conservator's performance to ensure the conservator is acting in the conservatee's best interest. (See Prob. Code, §§ 1850, 1850.5, 1851.) According to the Harbor Regional Center and the Public Defender, Petitioners were not acting in John's best interest by resisting the Harbor Regional Center's efforts to transfer him to a less restrictive facility and refusing to participate in the fair hearing process.

This argument lacks merit because it erroneously assumes the Pepperwood Facility is a less restrictive facility that meets John's needs and the Harbor Regional Center properly initiated the administrative fair hearing process. As explained above, the latter assumption is incorrect and the former assumption must be decided through the Lanterman Act's fair hearing process. Indeed, the trial court could not order John's transfer under its authority to review the conservatorship without first determining Petitioners failed to act in John's best interest. To reach that conclusion, the court would

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[6] Neither the Harbor Regional Center nor the Public Defender argue that the notice of proposed action the Harbor Regional Center served substantially complied with the fair hearing process's notice requirements. We therefore do not address whether the substantial compliance doctrine applies in this context or whether the Harbor Regional Center substantially complied. (See generally *American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 393 ["'Where a reasonable attempt has been made to comply with a statute in good faith, and there was no attempt to mislead or conceal, the doctrine of substantial compliance holds that the statute may be deemed satisfied'"].)

have to determine whether the Pepperwood facility was a less restrictive facility that met John's needs and whether Petitioners improperly opposed the transfer to that facility. The fair hearing process, however, is the exclusive forum for making that determination, and the Harbor Regional Center and the Public Defender may not use the trial court's general authority to review conservatorships to circumvent the specific statutory command that any dispute about the appropriate placement for a developmentally disabled person must be resolved through the Lanterman Act's fair hearing process. (*Nguyen v. Western Digital Corp.* (2014) 229 Cal.App.4th 1522, 1549 [""""A specific provision relating to a particular subject will govern a general provision, even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates""""].)

In summary, we conclude the trial court exceeded its authority by ordering John moved to the Pepperwood Facility because Petitioners' objections to that move had to be resolved through the Lanterman Act's fair hearing process before the court could consider the issues regarding John's appropriate placement. As explained above, the Pepperwood Facility has filled the space it previously reserved for John, and therefore the Harbor Regional Center must start over with its efforts to locate a less restrictive placement for John (and already may have done so).

We expect Petitioners will work with the Harbor Regional Center to identify a less restrictive placement capable of meeting John's needs because Fairview is scheduled to close in a few years and John eventually will be moved from that placement despite Petitioners' desire for him to remain there. By working now to find a new placement for John, Petitioners presumably will have greater options than if they continue their efforts to block John's transfer for as long as possible, and are left to accept the placement that remains when Fairview closes. In this case, Petitioners were fortunate the Harbor Regional Center failed to give proper notice of its proposed action to transfer John. But for that failure, Petitioners would have waived their objections to the

Pepperwood Facility by failing to engage in the fair hearing process, and John would have been transferred without a neutral decision maker weighing the merits of their objections to that facility.

IV

DISPOSITION

The petition is dismissed as moot. In the interest of justice, all parties shall bear their own costs on appeal.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

FYBEL, J.